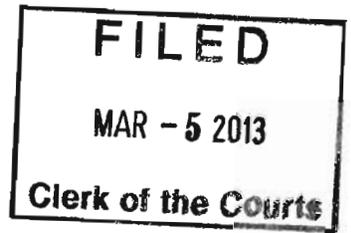


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: RULE 13, SECTION 2(g),
RULES OF THE TENNESSEE SUPREME COURT

No. M2012-02235-SC-RL2-RL - Filed: March 5, 2013

ORDER

Tenn. Sup. Ct. R. 13 establishes a system of providing indigent defense services to parties constitutionally and statutorily entitled to counsel, as well as the procedures for compensating attorneys and others providing those services. It has come to the Court's attention that Rule 13 contains no limitation on the number of hours an attorney can bill for services provided to clients. The Court is aware of payments to individual attorneys for work exceeding 3,500 billed hours in a year, as well as numerous other payments in amounts that far exceed a traditional year's work. For example, the weighted caseload studies conducted for District Attorneys General, District Public Defenders, and state Trial Court Judges all established 1,650 hours as the amount of time realistically available to each of these members of the judicial system in a given year. That figure takes into account that, during the standard work year (40 hours per week x 52 weeks = 2,080 hours), lawyers and judges will have to devote some time to other activities not directly related to work on particular cases. In addition, time not billed by a lawyer as a result of illness, vacation, administrative duties, and continuing legal education is inevitable. The result is the reality that hours billed in excess of these norms threaten the adequacy of representation provided to indigent clients due to excessive caseloads. It can also call into question the reasonableness of the claims.

On October 23, 2012, the Court filed an order soliciting public comments on a proposed amendment to address the foregoing concerns. The proposed amendment would add a new paragraph (g) to Tenn. Sup. Ct. R. 13, Section 2, which paragraph would set an annual cap on the total hours that an attorney may bill for indigent services. The deadline for submitting written comments on the proposed amendment was December 14, 2012.

After fully considering the written comments received during the comment period, the Court has decided to adopt a modified version of Tenn. Sup. Ct. R. 13, Section 2(g). Accordingly, the Court hereby adopts new Section 2(g) as set out in the Appendix to this order. This amendment shall take effect upon the filing of this order. The transitional provision set out in the amendment shall be repealed effective December 31, 2013.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

Tenn. Sup. Ct. R. 13, Section 2, is amended by adding the following new paragraph

(g):

(g) Counsel appointed or assigned to represent indigents shall not be paid for any time billed in excess of 2,000 hours per calendar year unless, in the opinion of the Administrative Director, an attorney has made reasonable efforts to comply with this limitation, but has been unable to do so, in whole or in part, due to the attorney's representation pursuant to Section 3 of this Rule. It is the responsibility of private counsel to manage their billable hours in compliance with the annual maximum. [The following additional language is a transitional provision and shall be repealed effective December 31, 2013:)] An attorney who has an existing caseload at the time of the adoption of this new subsection (g) shall take the annual hourly limit into consideration prior to accepting new appointments. An attorney who exceeds the annual hourly limit in 2013 due at least in part to hours billed in cases to which the attorney had been appointed prior to the adoption of this new subsection may request a waiver of this limitation for 2013. Any such request shall be submitted to the Director in writing and shall include details regarding the attorney's good faith efforts to comply with the rule.